

555 Eleventh Street, NW Mail Station 07 Washington, DC 20004-1304 Sender's Direct Line: 202.365.0325

KB@KarenBrinkmann.com

July 18, 2012

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary Federal Communications Commission 445 Twelfth Street, SW Washington, D.C. 20554

Re: Application of Cellco Partnership d/b/a Verizon Wireless and

SpectrumCo LLC for Consent to Assign Licenses;

Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses,

WT Docket No. 12-4 – Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On Monday, July 16, 2012, on behalf of FairPoint Communications, Inc. ("FairPoint"), I met with Louis Peraertz in the office of Commissioner Clyburn concerning the above-captioned applications for assignment of license (the "Applications"). Mr. Peraertz and I discussed the seven conditions proposed by the Midsize Carriers, through ITTA, and supported by FairPoint in letters filed in this proceeding on July 10.¹

Mr. Peraertz asked several questions about the expected effects of the pending transactions on competition in markets served by FairPoint and the Midsize Carriers, and we discussed how the proposed conditions would address those effects. Specifically, he asked:

• Whether any of the Midsize Carriers currently sell backhaul in markets in which any of the cable operators that are parties to the Applications (the "MSOs") is a competing backhaul provider? The answer is yes:

Letter from Genevieve Morelli, ITTA, to Marlene Dortch in WT Docket No. 12-4 (filed July 10, 2012); Letter from Karen Brinkmann, counsel to FairPoint, to Marlene Dortch in WT Docket No. 12-4 (filed July 10, 2012).

Marlene H. Dortch, Secretary Federal Communications Commission July 18, 2012 Page 2 of 4

- FairPoint provides substantial backhaul capacity to wireless carriers throughout its local exchange carrier ("LEC") service area in 18 states.
 FairPoint competes with the MSOs in approximately 80 percent of the FairPoint LEC footprint.
- Frontier Communications Corporation ("Frontier") provides backhaul capacity to wireless carriers in each of the 27 states where it has LEC operations. Frontier competes with the MSOs in approximately 50 percent of its footprint.
- CenturyLink also sells backhaul in all of its 37 states, including in locations where the MSOs are competitors.
- Whether any of the Midsize Carriers that offers video over broadband in its LEC service territories currently purchases video programming from any of the MSOs? The answer is yes:
 - Frontier offers FiOS in portions of its service territory acquired from Verizon in Indiana, Oregon and Washington, and offers approximately 20 channels of programming owned by the MSOs.
 - CenturyLink offers video over broadband in several of its LEC service areas, and it also offers programming owned by the MSOs.²
- Whether any of the Midsize Carriers offers wireless voice and broadband services, or has announced plans to enter this market? The answer is yes:
 - o CenturyLink resells VZW mobile services.
 - o Frontier has entered into an agreement to resell AT&T Mobility voice and data services bundled with Frontier's existing offerings. Under this agreement, announced in November 2011, Frontier will be able to offer co-branded services to mobile devices via the AT&T Mobility network. This offering currently is in the trial phase.
 - FairPoint does not currently offer mobile voice or broadband services. FairPoint does offer fixed wireless broadband in several rural locations.

I discussed with Mr. Peraertz the concerns of FairPoint that grant of the pending Applications without appropriate conditions could cut the LECs out of the backhaul market as well as significantly impede their ability to compete in the residential broadband market. We discussed the potential anti-competitive effects of proprietary technologies and exclusive arrangements that are likely to result from the Commercial Agreements among the Applicants. I noted my clients' concern that, in markets where they offer fixed voice and broadband but no mobile service, they will be at a severe competitive disadvantage if VZW and the MSOs are able to lock-in customers to their jointly sold service packages, and discriminate against customers that choose an

FairPoint offers video over broadband in several LEC service areas, but does not currently offer programming owned by any of the MSOs.

Marlene H. Dortch, Secretary Federal Communications Commission July 18, 2012 Page 3 of 4

alternative provider such as FairPoint or Frontier. I explained that a logical outgrowth of the Commercial Agreements, as consumers' wireless bandwidth consumption continues to grow, would be for the Applicants to favor customers of their combined services with bandwidth and speeds not available to customers who would otherwise prefer a competitor's fixed broadband product. This will discourage VZW customers from seeking out competitive broadband alternatives. Thus, for example, a VZW customer who subscribes to one of the MSOs' broadband services could be offered a package in which her mobile wireless minutes do not "count" against her total broadband bandwidth, but the VZW customer who subscribes to FairPoint broadband would face bandwidth caps.³

I concluded by urging that the Commission adopt the conditions proposed by the Midsize Carriers, specifically, that the Commission:

- 1. Prohibit preferential backhaul arrangements among the Applicants.
- 2. Prohibit discrimination in access to video content controlled by any of the Applicants.
- 3. Prohibit discriminatory or proprietary technical standards for hand-off between wireless and wireline networks, data sharing, content storage and access to competitive networks.
- 4. Prohibit the Applicants from enforcing data usage limits on customers using unaffiliated service providers unless the same data usage limits apply to their own customers.
- 5. Prohibit exclusivity in broadband retail offerings by Verizon Wireless.
- 6. Require the Applicants to follow the same porting processes that are required of telecommunications carriers under Part 64 of the Commission's rules.

_

Indeed, Verizon CEO Lowell McAdam admits that VZW expects to constrain, by pricing or otherwise, wireless end-user capacity consumption, and the VZW business plan will favor the customer that subscribes to VZW mobile services *and* the MSOs' broadband services. He explains that the company intends "to shift as much [mobile traffic] onto FiOS or onto the fixed network where we can and then provide – use that capacity to provide those higher demand services like video." P. Dampier, "Verizon CEO Ponders Killing Off Rural Phone/Broadband Service & Rake In Wireless Profits," Stop the Cap!, July 17, 2012, *available at*: http://stopthecap.com/2012/07/17/verizon-ceoponders-killing-off-rural-phonebroadband-service-rake-in-wireless-profits.

Marlene H. Dortch, Secretary Federal Communications Commission July 18, 2012 Page 4 of 4

7. Prohibit the cable Applicants from discriminatory or exclusionary sales practices for cable advertising.

Please direct any questions concerning this matter to me.

Very truly yours,

/s/

Karen Brinkmann

cc: Louis Peraertz